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**DEPARTMENT OF HEALTH  
STATE OF HAWAII**

<b>DEPARTMENT OF HEALTH,</b>	)	<b>NFV&amp;O NO. 2003-CW-EO-03</b>
<b>STATE OF HAWAII,</b>	)	
	)	
<b>Complainant,</b>	)	<b>SETTLEMENT AGREEMENT</b>
<b>vs.</b>	)	<b>AND ORDER</b>
	)	
<b>OCEANIC INSTITUTE,</b>	)	
	)	
<b>Respondent.</b>	)	

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**SETTLEMENT AGREEMENT AND ORDER**

**A. PARTIES AND PURPOSE**

1. The Complainant is the Department of Health, State of Hawaii, (“DOH”), an agency of the State of Hawaii. Its main office, the Director of Health’s office, is at 1250 Punchbowl Street, Honolulu, Hawaii 96813.

2. Oceanic Institute, (“OI”) is a Hawaii corporation currently doing business in the State of Hawaii. Its business address is 41-202 Kalanianaʻole Highway, Waimanalo, Hawaii, 96795.

3. The DOH and OI enter into this Settlement Agreement and Order (“Settlement Agreement”) to resolve disputes relating to violations of Section 342D-50(a) and (d), Hawaii Revised Statutes (“HRS”), and of Section 11-55-03, Hawaii Administrative Rules (“HAR”). In particular, the violations involve allegations of OI’s discharge of aquaculture pond overflow sea water containing marine life waste products into the Pacific Ocean in the vicinity of Makapuu Point, on the island of Oahu, in the State of Hawaii. This Settlement Agreement fully settles the administrative enforcement action, Department of Health, State of Hawaii, vs. Oceanic Institute,

Notice and Finding of Violation and Order (“NFV&O”) No. 2003-CW-EO-03. This Settlement Agreement is entered pursuant to Chapter 342D, HRS, and Chapter 11-55, HAR.

**B. AUTHORITY OF THE DOH**

4. Chapter 342D, HRS, authorizes the DOH to take enforcement actions and to assess penalties of up to \$25,000 for each violation of Chapter 342D, HRS, and Chapter 11-55, HAR.

**C. HISTORY**

5. At all times relevant to the NFV&O and this Settlement Agreement, OI has been a Hawaii corporation doing business in the State of Hawaii.

6. As part of its business of operating aquaculture research facilities, OI maintains aquaculture ponds that contain sea water. During the course of its business operations, OI has caused overflow sea water from those aquaculture ponds to be discharged into the Pacific Ocean waters off of Makapuu Point on Oahu. The discharged sea water contained pollutants in the form of marine life waste products.

7. In 1972, OI was advised by DOH that it did not need a permit to discharge its aquaculture pond overflow water into the Pacific Ocean. In February of 2003, DOH formally requested information from OI concerning the discharges and also conducted inspections of the OI facilities. By a letter dated March 31, 2003, DOH advised OI that it must cease the unpermitted discharges.

8. On September 12, 2003, DOH issued its NFV&O to OI for the discharges described above.

9. On September 30, 2003, OI requested a hearing to contest the findings and validity of the NFV&O. Subsequent to the hearing request, DOH and OI negotiated the terms contained in this Settlement Agreement on October 27, 2003.

**D. STIPULATED FINDINGS**

It is found and determined that:

10. OI’s discharges of aquaculture pond overflow sea water containing marine life waste products into the Pacific Ocean violate Sections 342D-50 (a) and (d), HRS, and Chapter 11-55-03, HAR.

11. OI takes full responsibility for the implementation of its responsibilities as defined in this Settlement Agreement.

**E. OBJECTIVE, PUBLIC INTEREST**

12. The purpose of this Settlement Agreement is to resolve all penalty disputes relating to the NFV&O issued on September 12, 2003.

13. The parties agree that settlement of these matters without further administrative procedure or judicial review is in the public interest and that the execution of this Settlement Agreement is the most appropriate means of resolving these matters.

#### **F. DEFINITIONS**

14. "Days" as used in this Settlement Agreement means calendar days.

#### **G. REMEDIAL ACTIONS**

15. In order to rectify the discharge violations, DOH and OI have negotiated a reasonable timetable for the completion of a dispersion well field on OI's property. The dispersion well field will allow OI to properly dispose of all aquaculture overflow pond sea water generated during the course of its aquaculture business. The agreed timetable is Attachment A to this document. The parties agree that Attachment A is incorporated as part of this Settlement Agreement.

16. In order to monitor OI's discharges, the DOH and OI have negotiated and agreed to the Water Quality and Effluent Requirements and Monitoring Program that is Attachment B to this document. The parties agree that Attachment B is incorporated as part of this Settlement Agreement.

17. In order to ensure public awareness of the current discharges from OI's operation, OI agrees to post and maintain signs at or near the effluent from the highway culvert near its operation. The signs will inform the public that the water flow from the culvert is from aquaculture ponds. The signs shall provide an OI telephone number to call for additional information. The location of the signs, the content of the signs, and the total number of signs to be posted shall be subject to DOH approval.

#### **H. STIPULATED PENALTIES**

18. OI agrees to pay a stipulated penalty of \$100.00 per day for each day the compliance schedule contained in Attachment A is not met.

#### **I. FORM OF PAYMENT**

19. Any penalty payments made to DOH under Part H above shall be paid by cashier's check, made payable to the State of Hawaii, and shall be received at DOH as set forth in Part O (NOTIFICATION). All penalty payments must be delivered or postmarked no later than 30 days

after the event triggering the payment requirement.

**J. DELAYS OR IMPEDIMENTS TO COMPLIANCE**

20. If any event occurs, or any situation arises which causes, or may cause, delays in the achievement of compliance by OI as provided in this Settlement Agreement, OI shall notify DOH orally as soon as feasible and in writing within 10 days after learning of the delay or anticipated delay. The notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by OI to prevent or minimize the delay, the timetable by which those measures will be implemented, and the expected effect on the environment of the delay. OI shall adopt all reasonable measures to avoid or minimize any such delay. Failure of OI to comply with the notice requirements of this paragraph shall render this section void and of no effect as to the particular incident involved and shall constitute a waiver of OI's right to request an extension of its obligations under this Settlement Agreement based on this incident.

21. If the parties agree that the delay or anticipated delay in compliance with this Settlement Agreement has been or will be caused by circumstances entirely beyond the control of OI and that OI is taking appropriate measures to reduce and mitigate the delay, the time for performance hereunder may be extended for a period no longer than the actual delay resulting from such circumstances. In such event, the parties shall modify this Settlement Agreement in accordance with the provisions of Part X (MODIFICATIONS).

22. The burden of proving that any delay is caused by circumstances entirely beyond its control shall rest with OI. Increased costs associated with the implementation of actions called for by this Settlement Agreement shall not, in any event, be a basis for changes in this Settlement Agreement or for extensions of time under the preceding paragraph. Delay in the achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.

**K. DISPUTE RESOLUTION**

23. Any dispute with respect to OI's liability or responsibilities shall be resolved in accordance with the provisions of Part K of this Settlement Agreement.

24. In the event of a dispute between the parties regarding the implementation of this Settlement Agreement, the position of DOH shall prevail unless OI submits a

written request to the Director of Health ("Director") to resolve the dispute. The request shall set forth the nature of the dispute with a proposal for its resolution. The DOH staff shall have an opportunity to present their position and proposal in writing to the Director. In any such dispute, OI shall have the burden of proving that its proposal appropriately fulfills the terms, conditions, requirements, and objectives of this Settlement Agreement, Chapter 342D, HRS, and any rules adopted pursuant to Chapter 342D, HRS. The Director shall have the final authority to resolve disputes arising under this Settlement Agreement. The Director's decision shall be binding upon the parties and not appealable. The Director may delegate the decision-making authority specified in this paragraph.

**L. ENTRY AND INSPECTION**

25. Any authorized representative of DOH, upon presentation of credentials, may enter upon the premises of, and/or inspect, the records of OI at any time during regular business hours for the purpose of monitoring compliance with the provisions of this Settlement Agreement. This provision shall not be deemed to limit any other authority DOH has to enter and inspect.

**M. PUBLIC INFORMATION**

26. All information and documents submitted by OI to DOH under this Settlement Agreement shall be subject to public inspection and copying unless identified as confidential by OI at the time of submittal. The information and documents so identified will be disclosed only in accordance with the provisions of Chapter 92F, HRS.

**N. PUBLIC NOTICE AND PUBLIC COMMENT**

27. As required by 40 C.F.R. 123.27(d)(2)(iii), notice of this proposed Settlement Agreement was published in the Honolulu Star-Bulletin, on \_\_\_\_\_, 2004. The public comment period ran from the last date of publication until \_\_\_\_\_, 2004.

☐ No comments were received by the DOH during the public comment period.

☐ Comments were received by the DOH. The DOH considered these comments before signing this Consent Order. DOH attaches its Response to Public Comments as Exhibit "\_\_\_".

The foregoing blanks in this section may be filled in, and the Exhibit may be noted on Page one, after the signing of this Settlement Agreement. OI shall arrange and pay for publication of the notice contemplated above and shall provide an affidavit of publication to DOH within 10 days

of the publication date. DOH reserves the right, in its sole discretion, to withhold or withdraw its consent to this Settlement Agreement if comments received during the public comment period reveal new facts about the violations listed above that warrant further investigation, or if the comments indicate that this Settlement Agreement is not in the public interest. DOH also reserves the right, after withholding or withdrawing its consent, to attempt to renegotiate a settlement of the alleged violations, or to take any other action that DOH deems appropriate.

**O. NOTIFICATION**

28. Whenever this Settlement Agreement requires a notice, a documentation, a letter, a report or a payment to be given by OI to DOH, such notice, documentation, letter, report or payment shall be directed to the individual specified below, at the address given, unless DOH gives notice in writing to OI that another individual has been designated to receive such communication:

Mr. Denis R. Lau  
Chief, Clean Water Branch  
Department of Health  
919 Ala Moana Boulevard, Room 301  
Honolulu, Hawaii 96814-4920  
Telephone: (808) 586-4309  
Fax: (808) 586-4352

**P. DUTY TO COMPLY WITH APPLICABLE LAW**

29. This Settlement Agreement in no way affects or relieves OI's responsibility to comply with all applicable state, federal or local laws, rules, or regulations.

30. This Settlement Agreement shall not be construed to limit any other remedies, including but not limited to the institution of proceedings for civil or criminal liability, available to DOH for violations of this Settlement Agreement or of any other provision of law.

**Q. EMERGENCY AUTHORITY**

31. This Settlement Agreement in no way affects the authority of DOH to respond to an emergency in accordance with Section 342D-10, HRS.

**R. ACTIONS AGAINST OTHER PARTIES**

32. This Settlement Agreement does not limit or affect the rights of the OI or of DOH as to any third parties.

**S. AUTHORITY OF SIGNATORIES**

33. Each undersigned representative of a party to this Settlement Agreement certifies that he or she has full authority to enter into this Settlement Agreement and to legally bind the party which he or she represents.

**T. BINDING EFFECT**

34. The provisions of this Settlement Agreement shall apply to and be binding upon the parties to this action, their officers, agents, trustees, servants, employees, successors, assigns and attorneys.

**U. OBLIGATION TO IMPLEMENT**

35. DOH and OI are obligated to take, and shall take, any and all actions necessary to implement and carry out the terms of this Settlement Agreement.

**V. ENTIRE AGREEMENT**

36. This Settlement Agreement sets forth the entire agreement between DOH and OI with respect to this matter.

**W. EFFECTIVE DATE**

37. This Settlement Agreement is effective upon compliance with the requirements of 40 C.F.R. 123.27(d)(2)(iii) and when signed by both parties.

**X. MODIFICATIONS**

38. This Settlement Agreement shall not be modified except in writing, signed by a duly authorized representative of OI and by the Deputy Director for Environmental Health, DOH, and approved and ordered by the Director.

**Y. TERMINATION**

39. OI must demonstrate to DOH's satisfaction that OI has complied with all of the terms of this Settlement Agreement. Within 25 days after such a showing by OI, DOH shall issue a letter to OI certifying satisfactory compliance, which shall terminate this Settlement Agreement.

**Z. EFFECT**

40. This Settlement Agreement constitutes the final order in this case, replacing the NFV&O.

**AA. COUNTERPARTS**

41. This Settlement Agreement may be executed in any number of counterparts by any party to this Settlement Agreement, each counterpart of which shall be deemed as an original, but all of which together shall constitute one and the same instrument. Unsigned duplicate pages may be discarded to form a single document.

**BB. COSTS**

42. Each party shall bear its own costs and attorneys' fees.

Dated: Honolulu, Hawaii, \_\_\_\_\_.

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OCEANIC INSTITUTE

DATED: Honolulu, Hawaii, \_\_\_\_\_.

AGREED, APPROVED, AND SO ORDERED:  
DEPARTMENT OF HEALTH  
STATE OF HAWAII

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LAURENCE K. LAU  
Deputy Director for  
Environmental Health

DATED: Honolulu, Hawaii, \_\_\_\_\_

APPROVED AS TO FORM:

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MARK G. McCONNELL  
Deputy Attorney General

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DEPARTMENT OF HEALTH, STATE OF HAWAII vs. OCEANIC INSTITUTE, NFV&O  
Docket No. 2003-CW-EO-03, SETTLEMENT AGREEMENT AND ORDER

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